record companies to maintain reasonable reserves of the mechanical royalties due the copyright owners, against which royalties on the returns can be offset. The Committee recognizes that this practice may be consistent with the statutory requirements for monthly compulsory license accounting reports, but recognizes the possibility that, without proper safeguards, the maintenance of such reserves could be manipulated to avoid making payments of the full amounts owing to copyright owners. Under these circumstances, the regulations prescribed by the Register of Copyrights should contain detailed provisions ensuring that the ultimate disposition of every phonorecord made under a compulsory license is accounted for, and that payment is made for every phonorecord ''voluntarily and permanently'' distributed. In particular, the Register should prescribe a point in time when, for accounting purposes under section 115, a phonorecord will be considered ''permanently distributed,'' and should prescribe the situations in which a compulsory licensee is barred from maintaining reserves (e.g., situations in which the compulsory licensee has frequently failed to make payments in the past.)

Rate of Royalty.—A large preponderance of the extensive testimony presented to the Committee on section 115 was devoted to the question of the amount of the statutory royalty rate. An extensive review and analysis of the testimony and arguments received on this question appear in the 1974 Senate report (S. Rep. No. 94–473) at page 71–94.

While upon initial review it might be assumed that the rate established in 1909 would not be reasonable at the present time, the committee believes that an increase in the mechanical royalty rate must be justified on the basis of existing economic conditions and not on the mere passage of 67 years. Following a thorough analysis of the problem, the Committee considers that an increase of the present two-cent royalty to a rate of 2¾ cents (or .6 of one cent per minute or fraction of playing time) is justified. This rate will be subject to review by the Copyright Royalty Commission, as provided by section 801, in 1980 and at 10-year intervals thereafter.

Accounting and Payment of Royalties; Effect of Default. Clause (3) of Section 115(c) provides that royalty payments are to be made on a monthly basis, in accordance with requirements that the Register of Copyrights shall prescribe by regulation. In order to increase the protection of copyright proprietors against economic harm from companies which might refuse or fail to pay their just obligations, compulsory licensees will also be required to make a detailed cumulative annual statement of account, certified by a Certified Public Accountant.

A source of criticism with respect to the compulsory licensing provisions of the present statute has been the rather ineffective sanctions against default by compulsory licensees. Clause (4) of section 115(c) corrects this defect by permitting the copyright owner to serve written notice on a defaulting licensee, and by providing for termination of the compulsory license if the default is not remedied within 30 days after notice is given. Termination under this clause ''renders either the making or the distribution, or both, of all phonorecords for which the royalty had not been paid, actionable as acts of infringement under section 501 and fully subject to the remedies provided by sections 502 through 506.''

REFERENCES IN TEXT

The antitrust laws, referred to in subsec. (c)(3)(B), are classified generally to chapter 1 (§1 et seq.) of Title 15, Commerce and Trade.

The date of enactment of the Digital Performance Right in Sound Recordings Act of 1995, referred to in subsec. (c)(3)(K), is the date of enactment of Pub. L. 104–39, which was approved Nov. 1, 1995.

AMENDMENTS

1995—Subsec. (a)(1). Pub. L. 104–39, §4(1), substituted ''any other person, including those who make phonorecords or digital phonorecord deliveries,'' for ''any other person'' in first sentence and inserted before period at end of second sentence '', including by means of a digital phonorecord delivery''.

Subsec. (c)(2). Pub. L. 104–39, §4(2), inserted ''and other than as provided in paragraph (3),'' after ''For this purpose,'' in second sentence.

Subsec. (c)(3) to (6). Pub. L. 104–39, §4(3), added par. (3) and redesignated former pars. (3) to (5) as (4) to (6), respectively.

Subsec. (d). Pub. L. 104–39, §4(5), added subsec. (d).

1984—Subsec. (c)(3) to (5). Pub. L. 98–450 added par. (3) and redesignated existing pars. (3) and (4) as (4) and (5), respectively.

EFFECTIVE DATE OF 1995 AMENDMENT

Amendment by Pub. L. 104–39 effective 3 months after Nov. 1, 1995, see section 6 of Pub. L. 104–39, set out as a note under section 101 of this title.

PERSONS OPERATING UNDER PREDECESSOR COMPULSORY LICENSING PROVISIONS

Section 106 of Pub. L. 94–553 provided that: ''In any case where, before January 1, 1978, a person has lawfully made parts of instruments serving to reproduce mechanically a copyrighted work under the compulsory license provisions of section 1(e) of title 17 as it existed on December 31, 1977, such person may continue to make and distribute such parts embodying the same mechanical reproduction without obtaining a new compulsory license under the terms of section 115 of title 17 as amended by the first section of this Act [this section]. However, such parts made on or after January 1, 1978, constitute phonorecords and are otherwise subject to the provisions of said section 115 [this section].''

CROSS REFERENCES

Action for infringement of copyright, see section 501 of this title.

Determinations concerning adjustment of reasonable copyright royalty rates by Copyright Royalty Tribunal, see section 801 of this title.

Exclusive rights in copyrighted work, see section 106 of this title.

Fee for notice of intention to make phonorecords, see section 708 of this title.

Institution and conclusion of proceedings concerning adjustment of royalty rates as provided in this section, see section 803 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 106, 501, 511, 708, 801, 802, 803 of this title; title 18 section 2319.

§ 116. Negotiated licenses for public performances by means of coin-operated phonorecord players

(a) APPLICABILITY OF SECTION.—This section applies to any nondramatic musical work embodied in a phonorecord.

(b) NEGOTIATED LICENSES.—

(1) AUTHORITY FOR NEGOTIATIONS.—Any owners of copyright in works to which this section applies and any operators of coin-operated phonorecord players may negotiate and agree upon the terms and rates of royalty payments for the performance of such works and the proportionate division of fees paid among copyright owners, and may designate common agents to negotiate, agree to, pay, or receive such royalty payments.

(2) ARBITRATION.—Parties to such a negotiation, within such time as may be specified by the Librarian of Congress by regulation, may determine the result of the negotiation by arbitration. Such arbitration shall be governed

by the provisions of title 9, to the extent such title is not inconsistent with this section. The parties shall give notice to the Librarian of Congress of any determination reached by arbitration and any such determination shall, as between the parties to the arbitration, be dispositive of the issues to which it relates.

(c) LICENSE AGREEMENTS SUPERIOR TO COPYRIGHT ARBITRATION ROYALTY PANEL DETERMINATIONS.—License agreements between one or more copyright owners and one or more operators of coin-operated phonorecord players, which are negotiated in accordance with subsection (b), shall be given effect in lieu of any otherwise applicable determination by a copyright arbitration royalty panel.

(Added Pub. L. 100–568, § 4(a)(4), Oct. 31, 1988, 102 Stat. 2855, § 116A; renumbered § 116 and amended Pub. L. 103–198, § 3(b)(1), Dec. 17, 1993, 107 Stat. 2309.)

PRIOR PROVISIONS

A prior section 116, Pub. L. 94–553, title I, § 101, Oct. 19, 1976, 90 Stat. 2562; Pub. L. 100–568, § 4(b)(1), Oct. 31, 1988, 102 Stat. 2857, related to scope of exclusive rights in nondramatic musical works and compulsory licenses for public performances by means of coin-operated phonorecord players, prior to repeal by Pub. L. 103–198, § 3(a), Dec. 17, 1993, 107 Stat. 2309.

AMENDMENTS

1993—Pub. L. 103–198, § 3(b)(1)(A), renumbered section 116A of this title as this section.

Subsec. (b). Pub. L. 103–198, § 3(b)(1)(B), (C), redesignated subsec. (c) as (b), substituted ''Librarian of Congress'' for ''Copyright Royalty Tribunal'' in two places in par. (2), and struck out former subsec. (b) which related to limitation on exclusive right if licenses not negotiated.

Subsec. (c). Pub. L. 103–198, § 3(b)(1)(B), (D), redesignated subsec. (d) as (c), in heading substituted ''Arbitration Royalty Panel'' for ''Royalty Tribunal'', and in text substituted ''subsection (b)'' for ''subsection (c)'' and ''a copyright arbitration royalty panel'' for ''the Copyright Royalty Tribunal''.

Subsecs. (d) to (g). Pub. L. 103–198, § 3(b)(1)(B), (E), redesignated subsec. (d) as (c) and struck out subsecs. (e) to (g) which provided, in subsec. (e), for a schedule for negotiation of licenses, in subsec. (f), for a suspension of various ratemaking activities by the Copyright Royalty Tribunal, and in subsec. (g), for transition provisions and retention of Copyright Royalty Tribunal jurisdiction.

EFFECTIVE DATE

Section effective Mar. 1, 1989, with any cause of action arising under this title before such date being governed by provisions as in effect when cause of action arose, see section 13 of Pub. L. 100–568, set out as an Effective Date of 1988 Amendment note under section 101 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 106, 501, 511, 801, 802, 803 of this title; title 18 section 2319.

[§ 116A. Renumbered § 116]

§ 117. Limitations on exclusive rights: Computer programs

Notwithstanding the provisions of section 106, it is not an infringement for the owner of a copy of a computer program to make or authorize the making of another copy or adaptation of that computer program provided:

(1) that such a new copy or adaptation is created as an essential step in the utilization of the computer program in conjunction with a machine and that it is used in no other manner, or

(2) that such new copy or adaptation is for archival purposes only and that all archival copies are destroyed in the event that continued possession of the computer program should cease to be rightful.

Any exact copies prepared in accordance with the provisions of this section may be leased, sold, or otherwise transferred, along with the copy from which such copies were prepared, only as part of the lease, sale, or other transfer of all rights in the program. Adaptations so prepared may be transferred only with the authorization of the copyright owner.

(Pub. L. 94–553, title I, § 101, Oct. 19, 1976, 90 Stat. 2565; Pub. L. 96–517, § 10(b), Dec. 12, 1980, 94 Stat. 3028.)

HISTORICAL AND REVISION NOTES

HOUSE REPORT NO. 94–1476

As the program for general revision of the copyright law has evolved, it has become increasingly apparent that in one major area the problems are not sufficiently developed for a definitive legislative solution. This is the area of computer uses of copyrighted works: the use of a work ''in conjunction with automatic systems capable of storing, processing, retrieving, or transferring information.'' The Commission on New Technological Uses is, among other things, now engaged in making a thorough study of the emerging patterns in this field and it will, on the basis of its findings, recommend definitive copyright provisions to deal with the situation.

Since it would be premature to change existing law on computer uses at present, the purpose of section 117 is to preserve the status quo. It is intended neither to cut off any rights that may now exist, nor to create new rights that might be denied under the Act of 1909 or under common law principles currently applicable.

The provision deals only with the exclusive rights of a copyright owner with respect to computer uses, that is, the bundle of rights specified for other types of uses in section 106 and qualified in sections 107 through 116 and 118. With respect to the copyright-ability of computer programs, the ownership of copyrights in them, the term of protection, and the formal requirements of the remainder of the bill, the new statute would apply.

Under section 117, an action for infringement of a copyrighted work by means of a computer would necessarily be a federal action brought under the new title 17. The court, in deciding the scope of exclusive rights in the computer area, would first need to determine the applicable law, whether State statutory or common law or the Act of 1909. Having determined what law was applicable, its decision would depend upon its interpretation of what that law was on the point on the day before the effective date of the new statute.

AMENDMENTS

1980—Pub. L. 96–517 substituted provision respecting limitations on exclusive rights in connection with computer programs for prior provision enunciating scope of exclusive rights and use of the work in conjunction with computers and similar information systems and declaring owner of copyright in a work without any greater or lesser rights with respect to the use of the work in conjunction with automatic systems capable of storing, processing, retrieving, or transferring information, or in conjunction with any similar device, machine, or process, than those afforded to works under the law, whether this title or the common law or stat-